IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1373 OF 1998

Neon Laboratories Pvt Ltd. ...Plaintiffs

Versus

Mr.Mukesh Agarwal,
Proprietor of East Point
Distribution Company ...Defendants

Shri R.M.Shah for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 08, 2007.

JUDGMENT:

1. The suit is listed under the caption of "Undefended Suits for Exparte Decree". The learned counsel appearing for the Plaintiffs has tendered on record affidavit in lieu of evidence of Mrs Archana Alok Goel, Assistant Manager (Legal) of the Plaintiffs who is also a constituted attorney of the Plaintiffs under the power of attorney dated 22nd March, 2007. The said affidavit is taken on record and marked "X" for identification. Certain documents are tendered by the Plaintiffs a alongwith list. The said documents alongwith the list are marked "Y" (collectively) for identification and are taken on record.

2. According to the case of the Plaintiffs they are involved in business of manufacture, sale or supply of the pharmaceutical formulations, anaesthetic AND antibiotic formulations and medicines. According to the

case of the Plaintiffs, the Defendant purchased various goods from the Plaintiffs at the agreed rates. The Plaintiffs supplied the goods to the Defendant from time to time against the bills, delivery chalans and other documents. An account of the Defendant was maintained by the Plaintiffs in which price of the goods sold and supplied was debited and part payments made by the Defendant to the Plaintiffs from time to time were credited to the account. According to the Plaintiffs, the account was maintained in the regular course of business and a sum fo Rs.1,24,730,94/- was due and payable by the Defendant to the Plaintiffs at the foot of the said account on 01st April, 1994.

3. According to the case of the Plaintiffs thereafter from 30th June, 1994 to 24th February, 1995, the Plaintiffs sold and supplied pharmaceuticals formulations, anaesthetic and antibiotics formulations and medicines under various bills and relevant chalans described in paragraph No.4 of the plaint. After repeated demands the Defendant made part payments to the Plaintiffs. Certain credit notes were issued by the Plaintiffs. According to the Plaintiffs the balance amount payable by the Defendant as on 02nd April, 1995 was Rs.01,00,818.21/-. It is the case of the Plaintiffs that the Defendant had agreed to pay interest at the rate of 24% per annum on unpaid bill amounts.

4. According to the case of the Plaintiffs the Defendant had agreed to furnish sales tax ‘C’ forms or certificates in respect of various bills. As the Defendant failed to furnish sales tax ‘C’ forms or certificates, according to the case of the Plaintiffs they are entitled to recover a sum of Rs.24,074.88/- by way of sales tax calculated at the rate of 6% on the bill amounts. By advocates letter dated 17th December, 1997 the Defendant was called upon to pay the dues. However, there was no response to the said letter by the Defendant.

5. The claim of the Plaintiffs is for recovery of sum of Rs.01,00,881.21/- at the foot of the account and interest on the said amount from 02nd April, 1995 at the rate of 12% per annum till the date of filing of the suit. The Plaintiffs are claiming a sum of Rs.24,078.88/- being the amount of Sale Tax Payable and interest on the said amount from 01st April, 1995 at the rate of 12% per annum amounting to Rs.8,400/-.

6. Perusal of the affidavit of Mrs.Archana Goel shows that the claim made by the Plaintiffs has been duly proved. An extract of the account of the Defendant maintained by the Plaintiffs has been produced by the Plaintiffs. An extract of the said account has been duly proved which shows liability of Rs.1,00,881.21/- as on 02nd April, 1995. Office copy of the legal notice

dated 17th December, 1997 has been duly proved. The postal acknowledgment of the said notice has been placed on record.

7. Thus, the Plaintiffs have established the liability of the Defendants to pay the suit claim. The Plaintiffs have prayed for interest at the rate of 12% per annum from the date of the suit till payment or realisation. The transaction between the parties is a commercial transaction and according to the Plaintiffs, the agreed rate of interest is 24% per annum. Considering the facts and circumstances of the case, the interest on decretal amount deserves to be awarded at the rate of 9% per annum.

8. Hence, the suit is decreed as prayed with a modification that interest payable on the sum of Rs.01,24,956.09/- (i.e principal amount of Rs.1,00,881.21/- plus sales tax of Rs.24,074.88/-) will be 9% per annum instead of 12% per annum from the date of the suit till realisation. The Plaintiffs will be entitled to the costs from the Defendant. The Plaintiffs will be entitled to refund of Court fees, if any, as per rules.

9. Certified copy is expedited.

JUDGE